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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CARLOS Z.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F065403

(Super. Ct. Nos. 516002, 516003)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Jennifer O. Trimble, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin L. McIver, Deputy County Counsel,
for Real Party in Interest.

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* Before Wiseman, Acting P.J., Levy, J., and Cornell, J.

Carlos Z. seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 18-month review hearing (Welf. & Inst. Code, § 366.22, subd. (a))¹ terminating his reunification services and setting a section 366.26 hearing as to his four- and three-year-old daughters, S.Z. and E.Z. respectively. Carlos contends the juvenile court erred in finding that he was provided reasonable services and in not continuing them until the 24-month review hearing. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Carlos and Rosa, an unmarried couple, are the parents of S.Z. and E.Z., the subjects of this writ petition. In September 2010, the Stanislaus County Community Services Agency (agency) received a report that Rosa slept all day, was out at night and left then two-year-old S.Z. and 17-month-old E.Z. unsupervised. The report also alleged that there was little to no food in the home.

The following day, a social worker from the agency visited Carlos and Rosa's home and found it to be dirty with a foul odor. The social worker observed dirty dishes in the kitchen with roaches crawling over food, minimal food in the refrigerator and a knife in reach of the children. Rosa and Carlos told the social worker they were disabled—she with a learning disability and he with painful gout. They both acknowledged needing help to learn to care for the children. Carlos and Rosa submitted samples for drug testing. Carlos tested negative but Rosa tested positive for methamphetamine.

The agency provided Carlos and Rosa voluntary services over the ensuing four months; however, Rosa was unable to remain drug free and neither was able to maintain a

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

clean and safe home. Consequently, in January 2011, the agency took the children into protective custody and filed dependency petitions seeking their removal. That same month, the juvenile court ordered the children detained. The agency placed the children together in the home of Mr. and Mrs. A.

In February 2011, the juvenile court exercised its dependency jurisdiction over the children and ordered Carlos and Rosa to participate in reunification services. Their services plans required them to participate in psychological evaluations, complete a parenting program, and submit to random drug testing. Rosa's services plan additionally required her to complete assessments for anger management and substance abuse and cooperate with housekeeping services. The juvenile court set the six-month review hearing for August 2011.

In March 2011, Carlos and Rosa were evaluated by psychologist Philip S. Trompetter who concluded that Carlos had cognitive, but not emotional or behavioral limitations, and was amenable to his reunification plan. Dr. Trompetter also concluded, however, that Carlos was passive in his relationship with Rosa and recommended that the agency provide him assertiveness training. Dr. Trompetter further concluded that Rosa had intellectual limitations, but was more personality disordered than Carlos and, unlike Carlos, had a negative attitude toward reunification. Consequently, Dr. Trompetter considered Rosa less amenable to the process.

In its report for the six-month review hearing, the agency recommended that the juvenile court terminate reunification services for Rosa but continue them for Carlos. According to the agency, Rosa was still testing positive for methamphetamine and was not attending anger management counseling or parenting classes. Carlos, on the other hand, completed parenting classes and tested negative for drugs. In addition, he met with therapist Maryanne Cose four times for assertiveness training and reported that he was being more firm with Rosa and setting limits. In July 2011, during a visit, he told the

social worker that he informed Rosa that if she did not stay clean and sober he was going to leave with the children and find his own place.

In August 2011, following a contested six-month review hearing, the juvenile court terminated Rosa's reunification services and continued services for Carlos to the 12-month review hearing which it set for January 2012. Rosa did not appeal from the juvenile court's termination order.

During the intervening months, Carlos made progress toward reunifying with his daughters. He maintained little contact with Rosa and knew that she was not allowed to be around the children. He said that he would not let Rosa in his home and would call 911 if she came to his house and would not leave. In addition, Carlos continued in counseling with Ms. Cose. During their counseling sessions, they reviewed scenarios where he would need to be assertive with Rosa and even practiced calling the police should the need arise. In addition, Carlos was able to have the girls visit him in his home once a week with the support of a parent mentor. The mentor reported that she had no concerns about Carlos's ability to parent the girls and that his home appeared tidy. In light of Carlos's progress, the agency recommended that the juvenile court continue Carlos's reunification services and grant the agency discretion to begin a trial visit for Carlos but only if the children's maternal grandmother vacated his house. She had become Carlos's roommate, but had a criminal history that prevented the children from living in the same house with her. She had been asked to leave but was not able to leave until February 1.

In January 2012, the juvenile court convened the 12-month review hearing and granted the agency discretion to begin a trial visit conditioned on the social worker's ability to enter Carlos's home anytime without a warrant to assess the children's safety and to remove them if necessary. The juvenile court also approved an updated reunification plan for Carlos that required him to participate in interactive opportunities

with the children. The juvenile court continued the hearing until February 2012 at which it continued Carlos's reunification services to the 18-month review hearing which it set for July 2012.

In early May 2012, the agency received a report that two women were sleeping in Carlos's home when the parent mentor visited there. Carlos stated that the women were Rosa's cousins but before the social worker arrived to investigate, the women were gone. A neighbor also reported hearing a female arguing with Carlos the previous night and that a female was at his home on other nights as well. Approximately two weeks later, a social worker made an unannounced visit to Carlos's home. Carlos refused the social worker entry, forcing her to contact the police. When the police arrived and entered the home, they found Rosa sleeping in one of the beds. As a result, the agency terminated the trial visit and filed a petition under section 388 asking the juvenile court to terminate trial visitation and Carlos's reunification services.

In June 2012, foster parents Mr. and Mrs. A. filed a motion for de facto parent status which the juvenile court granted.

In its report for the 18-month review hearing, the agency recommended that the juvenile court terminate Carlos's reunification services and set a section 366.26 hearing to establish a permanent plan of adoption for the children.

In July 2012, the juvenile court conducted a contested 18-month review hearing in combination with a contested hearing on the agency's section 388 petition. Rosa made an offer of proof accepted by counsel that she was only at Carlos's house one time during the reporting period and it was because the buses stopped operating and she was stranded with no place to sleep. She also said she lives with her sister across town from where Carlos lives and she believed that Carlos was a good father and she wanted him to have custody of the children.

Mr. A., the de facto father, testified that Carlos was an affectionate and loving father and that the children asked for their father daily. He said he dropped the children off at Carlos's home on several occasions and entered Carlos's living room. He observed Carlos's home to be "very clean." He said he had never gone beyond the living room and the last time he was there was about three weeks before the hearing. Before that, he had not been to Carlos's home for approximately three months. He said the girls were always very happy when they went to see Carlos and he was always happy to see them. He said he had never seen Rosa in Carlos's house. He believed Carlos should be given a second chance and said it would hurt him to have the children living with him and asking for their father.

Eric Latino, Carlos's neighbor, testified that he lived across the street from Carlos and had seen Carlos almost every day outside playing with his daughters. From the interactions he observed between Carlos and his daughters, he believed Carlos was a good father. He never heard arguing at Carlos's house, never saw Rosa there, or any other females coming from there. He said he had not seen Carlos with the children for about two or three months.

Carlos testified that the women sleeping in his house in early May 2012 were Rosa's cousins. He said they were in his house for half of a day. One he only knew by the name Tootsie. He did not know the name of the other woman. He explained that Rosa arrived at his house around 10:00 o'clock at night in late May and banged on his door crying with nowhere to go. He said he felt sorry for her and let her in his house. He said the girls were sleeping and Rosa did not interact with them. The following day, the social worker arrived at approximately 10:00 a.m. as he and the girls were leaving to go to the park. He told the social worker that Rosa was not in the house. He said if Rosa showed up at his house, he would call the police and tell her to leave.

Carlos also testified that he had not had any counseling sessions with Ms. Cose since the trial visit ended because she was booked. However, he said he had an appointment with Ms. Cose after the trial visit ended which he cancelled in order to visit the girls at the agency. He said he had an appointment scheduled with her at the end of July 2012.

Under questioning by the juvenile court, Carlos admitted that he did not know the two women who he let sleep in his house very well and he made a mistake in doing so. He also admitted that he made a mistake allowing Rosa to sleep in his house. He said he did not tell the social worker that Rosa was in his house because he “couldn’t breathe.” He was afraid she would remove the children if she found out.

The juvenile court also asked Carlos why he let Rosa in his house instead of calling the police as he and Ms. Cose had practiced. He responded, “Mistake.”

At the conclusion of the hearing, the juvenile court found that Carlos was provided reasonable services but that he made poor progress in his services plan. The juvenile court also found there was not a substantial probability the children could be returned to Carlos’s custody after an additional six months of services and ordered his services terminated. Finally, the juvenile court set a section 366.26 hearing. This petition ensued.

DISCUSSION

I. Reasonableness of Services

Carlos contends the juvenile court erred in finding he was provided reasonable services because the agency failed to provide him individual counseling and assertiveness training after his trial visit was terminated in May 2012. On appeal, petitioner bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) On a challenge to the juvenile court’s reasonable services finding, we view the evidence in a light most favorable to the respondent, indulging in all legitimate and reasonable inferences to uphold the judgment. (*In re Misako R.* (1991) 2

Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*) Moreover, under our review, services need not be perfect to be reasonable. Rather, the "standard is ... whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) In this case, we conclude that they were.

Ms. Cose provided Carlos individual counseling and assertiveness training and, according to his testimony, her services were available to him after the trial visit was terminated. He testified that he had a scheduled appointment with her during that period but cancelled it in order to visit the children. He also testified that, other than his cancellation, the only reason he did not have counseling sessions with Ms. Cose was because she did not have any appointments available. We fail to see how the agency can be faulted for Carlos's lack of counseling when he cancelled the only scheduled appointment and when the agency has no control over Ms. Cose's availability. We thus conclude substantial evidence supports the juvenile court's reasonable services finding.

II. Substantial Probability of Return

Carlos contends the juvenile court erred in finding there was not a substantial probability the children could be returned to his custody. Rather, he asserts it was "highly likely" that they would have been if he had received additional assertiveness training and help obtaining a restraining order. We conclude the juvenile court, having found that Carlos was provided reasonable services, had no choice under sections 361.5, subdivision (a)(4) and 366.22, subdivision (b) but to terminate reunification services. We also conclude that the juvenile court did not abuse its discretion under section 352, subdivision (a) in not continuing the 18-month review hearing to provide Carlos further services.

Section 361.5, subdivision (a)(4) sets forth the time limitations on reunification services as relevant here:

“[C]ourt-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that it is in the child’s best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent ... who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent”

Section 366.22, subdivision (b) (subdivision (b)) describes such a parent as one “who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child’s return”

In the present case, Carlos fails to show that he is a parent described in subdivision (b) as he was not court-ordered to participate in residential substance abuse treatment nor was he discharged from incarceration or institutionalization during the reunification period. Consequently, the juvenile court lacked statutory authority to continue reunification services for Carlos beyond the 18-month review hearing.

Further, the juvenile court did not abuse its discretion under section 352, subdivision (a) (subdivision (a)) in deciding not to continue the 18-month review hearing so as to afford Carlos additional time to reunify. Subdivision (a) grants the juvenile court discretion to continue any dependency hearing beyond the time limit within which the hearing is otherwise required to be conducted on a showing of good cause as long as a continuance is not contrary to the minor’s interest. (§ 352, subd. (a).) In this case, Carlos failed to show good cause for continuing the hearing. Instead, what he demonstrated was that despite 18 months of services, including assertiveness training, he was unable to protect the children from their mother. He also demonstrated that he could not be trusted

to cooperate with the agency to ensure their protection. Moreover, given the children's need for permanency and stability and Carlos's poor prospect of successfully reunifying with them, the juvenile court could properly conclude that a continuance of the 18-month review hearing would be contrary to the children's interests. Thus, we find no abuse of discretion in the juvenile court's order terminating Carlos's reunification services.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.